

ATF Issues New Rule Amending Secure Gun Storage Requirements

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On January 4, 2022, the Department of Justice (DOJ) announced a new rule governing secure storage requirements for federal firearms licensees (FFL). The new rule goes into effect on February 3, 2022. DOJ also announced that it was publishing a new “best practices” guide for licensees.

The rule implements an Obama-era proposal that would amend certain Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to strengthen secure gun storage requirements for licensees. Specifically, the rule makes five key changes to ATF’s regulations. While the ATF received various comments regarding its statutory authority to make certain changes proposed in the May 2016 notice of proposed rulemaking, it declined to make changes in response to the comments.

First, the rule codifies the ATF’s existing practice of requiring applicants for federal firearms dealer licenses to certify that secure gun storage or safety devices will be available at any place where firearms are sold under the license to non-licensed individuals.

Second, the rule defines “secure gun storage or safety device,” which includes a new requirement that the secure gun storage or safety device be compatible with the firearms offered for sale by the licensee.

Third, the rule creates a new certification requirement for applications for federal firearms importers and manufacture licenses if the licensee sells firearms to non-licensees on its premises.

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Fourth, and most importantly for licensees, the rule allows the ATF to use noncompliance with the secure gun storage or safety device requirement to revoke a federal firearms license despite a statutory prohibition that “evidence regarding compliance or noncompliance [with the secure gun storage or safety device requirement] shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity.”

Finally, the rule amends the definitions of “antique firearm,” “rifle,” and “shotgun” to reflect amendments to the authorizing statute.

Additionally, the ATF published an online best practices guide, “designed to assist FFLs in complying with all required firearm laws and regulations that are designed to ensure public safety and the traceability of firearms.”

FFLs that transfer firearms to non-licensees should ensure that they possess gun storage and safety devices that are compatible with their inventory.

Wiley has a robust National Security practice, which includes issues arising from ATF rules as well as related export control laws and regulations. Please contact one of the authors listed on this alert for any questions.